Boden Store Fixtures, Inc. *and* Pacific Northwest Regional Council of Carpenters affiliated with United Brotherhood of Carpenters & Joiners of America. Case 36–CA–9451–1

July 30, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND MEISBURG

On April 28, 2004, Administrative Law Judge Gerald A. Wacknov issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to adopt the judge's rulings, findings, conclusions, and recommended Order.

We agree with the judge that the Respondent violated Section 8(a)(5) and (1) by refusing the Union's request for information relating to an August 13, 2002 grievance filed by the Union, even though the Union was not a named party to the national agreement between the Respondent and the United Brotherhood of Carpenters & Joiners of America (Carpenters).[1] In addition to the reasons given by the judge, we rely on the following circumstances.

The Respondent's national agreement with the Carpenters expressly obligated the Respondent to comply with the terms of certain local agreements where it did business. This included the Union's local agreement with an Oregon contractors' association. That local agreement contained a detailed grievance procedure, which expressly authorized the Union to process grievances "arising out of a violation, misunderstanding or difference in interpretation of [the local agreement]."[2] By agreeing to comply with this grievance procedure, the Respondent accepted the Carpenters' effective delegation of authority to the Union to enforce the local agreement. And, indeed, while the Union's grievance was nominally filed under the national agreement, the substance of the grievance made clear that it was based on the Respondent's alleged failure to comply with the terms of the local agreement.[3] Accordingly, the Respondent was obliged to provide the Union with requested information that was relevant and necessary to the Union's investigation and processing of the grievance. Cf. *Advanced Construction Services*, 330 NLRB 365 fn. 2 (1999), enfd. 247 F.3d 807 (8th Cir. 2001); see also *Postal Service*, 310 NLRB 701 fn. 3 (1993).

ORDER

The Respondent, Boden Store Fixtures, Inc., Portland, Oregon, its officers, agents, successors, and assigns, shall take the action set forth in the judge's Order.

Dated, Washington, D.C. July 30, 2004

Robert J. Battista,	Chairman
Wilma B. Liebman,	Member
Ronald Meisburg,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Adam D. Morrison, Esq., for the General Counsel.
Richard Van Cleve, Esq. (Barran & Liebman LLP), of Portland, Oregon, for the Respondent.
Harlan Bernstein, Esq. (Jolles & Bernstein), of Portland, Oregon, for the Union.

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge: Pursuant to notice a hearing in this matter was held before me in Portland, Oregon on March 23, 2004. The charge was filed by Pacific Northwest Regional Council of Carpenters affiliated with United Brotherhood of Carpenters and Joiners of America (Union), on September 29, 2003. On December 30, 2003, the Regional Director for Region 19 of the National Labor Relations Board (Board) issued a Complaint and Notice of Hearing alleging violations by Boden Store Fixtures, Inc. (Respondent) of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended (Act). The Respondent, in its answer to the complaint, duly filed, denies that it has violated the Act as alleged.

The parties were afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, and to introduce relevant evidence. At the close of the hearing the General Counsel and counsel for the Union argued the matter orally on

[1] The Respondent does not contest the relevancy of the requested information or the Union's need for it.

[2] The Respondent's vice president of human resources admitted on cross-examination that this grievance procedure was in effect when the Union filed its August 13 grievance.

[3] The local agreement contained specific language restricting the Respondent's ability to contract out bargaining unit work, which was the subject of the Union's grievance.

the record, and since the close of the hearing a brief has been received from counsel for the Respondent. Upon the entire record, and based upon my observation of the witnesses and consideration of the oral arguments and brief submitted, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The Respondent is an Oregon corporation with its office and place of business located in Portland, Oregon, where it is engaged in the business of designing, fabricating and installing custom and proprietary display fixtures. In the course and conduct of its business operations, the Respondent purchases and causes to be delivered to its facility within the State of Oregon goods and materials valued in excess of $50,000 directly from sources outside said State. It is admitted and I find that the Respondent is and at all material times has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is admitted and I find that at all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. ALLEGED UNFAIR LABOR PRACTICES

A. Issues

The principal issue in this proceeding is whether the Respondent has violated and is violating Section 8(a)(1) and (5) of the Act by refusing to furnish requested information to the Union.

B. Facts

The Respondent is an employer engaged in the building and construction industry. Since August, 1985, the Respondent has been a party to an agreement with the United Brotherhood of Carpenters and Joiners of America (UBCJA), also called the national agreement, providing, inter alia, that:

> The Company agrees to recognize the jurisdictional claims of the UBCJA and to comply with the contractual wages, fringe benefits, hours and other working conditions established between the UBCJA affiliates and the employers or recognized employers agencies in the localities in which the Company does any work within the jurisdiction of the UBCJA.
>
> . . . .
>
> The Company shall not subcontract any work within the jurisdiction of the UBCJA which is to be performed for the jobsite except to a contractor who holds an applicable agreement with the UBCJA or its relevant affiliate or who agrees in writing, prior to or at the time of the execution of his subcontract, to be bound by the terms of this Agreement.
>
> . . . .
>
> There shall be no strike or lockout pending any dispute being investigated and all peaceable means taken to bring about a settlement.

Since June 1, 1983, the Union, an affiliate of the UBCJA, was also signatory to an 8(f) pre-hire agreement with the Respondent, and represented the Respondent's employees who performed installation and related work at the jobsite. The Respondent cancelled or repudiated this agreement in about June, 2002, and thereafter the aforementioned UBCJA agreement governed the relationship between the parties at least until August 25, 2003.[1]

Union Business Representative Bill Walden, a field representative for the Pacific Northwest Regional Council of Carpenters, testified that in June, 2002 he began receiving complaints from unit employees that the Respondent was laying them off and was hiring temp agency employees to perform their work at the jobsites. As a result, on August 13, 2002, the Union wrote the Respondent that it was grieving the failure of the Respondent to comply with the terms of the UBCJA agreement wherein the Respondent was required to comply with the terms and conditions of employment contained in local agreements. The letter goes on to state:

The remedy sought is for the employer to cease and desist from any and all failures to comply with the terms and conditions of the [UBCJA] "Agreement" and to make any and all affected individuals and entities whole for any losses sustained as a result of the employer's breach, including, but not limited to, wages and fringe benefits.

By letter dated July 9, 2003, the Union's attorney, confirming a June 2003 telephone conversation with Respondent's attorney, requested that the Respondent furnish information necessary for the Union to investigate and resolve the aforementioned grievance "for the period from July 14, 2002 to the present." The letter requests seven categories of information, as follows:

> 1. A list of each occasion on which the company subcontracted work.
>
> 2. The basis and/or reasons why the employer did not assign the work to bargaining unit personnel.
>
> 3. The name of each contractor hired by the employer to perform such work.
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> 4. A copy of all contracts between the employer and said contractors.
>
> 5. The amount of dollars paid for each project, including wage rates paid to employees.
>
> 6. A list of any and all interaction with any temporary employment services or agencies, including a copy of any such agreements.

[1] The Respondent maintains it terminated this agreement in writing by notifying the UBCJA but did not also notify the Union; the Union claims it has no knowledge of the notification to the UBCJA. The Respondent did not introduce into evidence a copy of the notification. Even if the UBCJA national agreement is no longer in effect, the grievance was initiated and the request for information was made during the term of that contract; therefore the requested information must be furnished. See Jervis W. Webb Co., supra, at page 318.

7. A list of any wage package paid to any such temporary agency (including the amount paid to employees), including documentation regarding the work performed by such agencies, listing:

(a) the workers who performed the work,
(b) the dates such work was performed,
(c) the nature of such work,
(d) the reason the work was not assigned to the bargaining unit,
(e) the duration of each job.

The Respondent's attorney replied by letter dated July 22, 2003, stating that the Respondent never subcontracted any work, but "did augment its work force on certain projects with individuals hired from temporary employment agencies," who performed "non-bargaining unit work." Other than this response, the Respondent has refused to furnish the requested information.

C. Analysis and Conclusions

On August 13, 2002, the Union notified the Respondent that it was grieving the Respondent's alleged failure to comply with its obligations under the terms of the UBCJA national agreement. About a year later the Union requested information concerning this matter "for the period from July 14, 2002 to the present." At the time the Union requested this information the UBCJA national agreement was in effect.

There is no contention that the requested information is not relevant to the Respondent's compliance with the contract. Nor is there any contention that the requested information is unavailable or that its production would be burdensome to the Respondent.

The Respondent, in its brief, maintains that the Union has no standing to bring this case or to request information under the UBCJA agreement as the Union has never been a party to that agreement. The Respondent cites no authority in support of the argument.

The UBCJA requires the Respondent "to comply with the contractual wages, fringe benefits, hours and other working conditions established between the UBCJA affiliates and the employers... in the localities in which the Company does any work within the jurisdiction of the UBCJA." It would appear that under the circumstances, the Union, an affiliate of the UBCJA, has the same rights and interests as the UBCJA to request information regarding contract compliance, as the interests of the UBCJA and its affiliates in representing the same unit employees are identical. Further, in Jervis B. *Webb Co*., 302 NLRB 316 (1991), the employer was signatory to the "1970 Standard International Agreement" with the UBCJA, but the Board charge, alleging a failure to furnish information, was brought by Local 1827, an affiliate of the UBCJA. There the Standard International Agreement "incorporated by reference the terms and conditions of the local union agreements when a signatory employer was performing carpentry work within the respective territorial jurisdictions of the local unions." Under such circumstances, the Board stated, at page 318, "Thus, the contractual relationship between the Respondent and the [local] Union was defined by both the Standard International Agreement and the applicable local union agreement." Accordingly, the UBCJA agreement establishes a contractual relationship between the Union and the Respondent. I find no merit to the contention of the Respondent that the Union has no standing to file the instant charge or pursue this matter.

The Respondent also argues that since the Union filed what it characterized as a "grievance," and there is no specific grievance or arbitration machinery in the UBCJA national agreement, therefore the requested information can not be pertinent to any outstanding issues between the parties and need not be furnished. The Respondent cites no authority in support of this argument.

As noted, it is undisputed that the information requested is relevant. As the Board has stated in Safeway Stores, 236 NLRB 1126 (1978) at fn. 1,[2] "[B]efore a union is put to the effort of arbitrating even the question of arbitrability, it has a statutory right to potentially relevant information necessary to allow it to decide if the underlying grievances have merit and whether they should be pursued at all." The Union has the right to request information from an employer in order to police the contract and insure compliance. It is only after obtaining such information that the Union is in the position of having to decide what to do next with the information it has obtained. Further, assuming arguendo that there may be no arbitrability requirement, the Union may have other options available to it to obtain compliance with the contract. Accordingly, I find this argument of the Respondent to be without merit.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has violated Section 8(a)(5) and (1) of the Act as set forth herein.

THE REMEDY

Having found that the Respondent has violated and is violating Section 8(a)(5) and (1) of the Act I recommend that it be required to cease and desist therefrom and from in any other like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act. I shall also recommend the posting of an appropriate notice, attached hereto as "Appendix."[3]

ORDER

The Respondent, Boden Store Fixtures, Inc., its officers, Portland, Oregon, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Failing and refusing to provide the Union with the information requested in the Union's July 9, 2003 written request for information.

[2] Enfd. 622 F.2d 425 (1980), cert. den. 450 U.S. 913 (1981).

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board a

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the purposes of the Act:

(a) Within 21 days after receipt of this decision furnish the Union with the information requested by it in its July 9, 2003 request for information.

(b) Within 14 days after service by the Region, post at its facility copies of the attached notice marked "Appendix."[4]Copies of the notice, on forms provided by the Regional Director for Region 19, after being duly signed by Respondent's representative, shall be posted immediately upon receipt thereof, and shall remain posted by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 21 days after service by the Regional Office, file with the Regional Director for Region 19 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated: April 28, 2004

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the National Labor Relations Board An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to give requested information to Pacific Northwest Regional Council o Carpenters Affiliated United Brotherhood o Carpenters & Joiners o America.

WE WILL promptly furnish the requested information to the Union.

WE WILL NOT in any like or related manner interfere with, restrain, r coerce employees in the exercise of the foregoing rights guaranteed under Section 7 of the Act.

BODEN STORE FIXTURES, INC.